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10/628,695

07/28/2003

James Jannard

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11/30/2005

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EXAMINER

JACKSON, BLANE J

ART UNIT

PAPER NUMBER

2685

DATE MAILED: 11/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/628,695

Applicant(s)

JANNARD ET AL.

Examiner

Blane J. Jackson

Art Unit

2685

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 July 2003 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 7-9, 18, 23 and 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

the terms "not more than about 110 yards" from claim 1;

the terms "from about (2) mm and about (3) cm" in claims 7 and 9;

the terms "at least about 4 mm" in claim 8;

the terms "distance of no more than about 100 yards" in claim 18; and

the terms "range of no greater than about (70) yards in claims 23 and 24 are relative terms which renders the claims indefinite. These terms are not defined by the associated claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-17 and 35-41 are rejected under 35 U.S.C. 102(e) as being anticipated by Warren (US 2002/0197961).

As to claims 1-4 and 6, Warren teaches a wearable wireless audio interface comprising:

A support configured to support at least one lens in a field of view of a wearer (figure 2, eyeglasses),

Interface electronics carried by the support and configured to output a first signal

A transmitter configured to transmit a second readable signal not more than about 100 yards, the second signal corresponding to the first signal (wireless transceiver mounted in the frame utilizing short range 2.4 GHz ISM Bluetooth protocol between the eyeglasses and electronic device such as a cell phone, paragraphs 0023, 0026 and 0029 and low power short range signals: paragraph 0033).

As to claim 5 with respect to claim 4, Warren teaches at least on microphone carried by the support (figure 2, eyeglasses (10) and microphone (20), paragraph 0028 and 0035).

As to claims 7-9, Warren teaches a first speaker and a second speaker in communication with the interface electronics and carried by the support such that they

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are positioned adjacent but spaced apart from first and second ears of the wearer when the supports carried by the wearer wherein the lateral distance between the center of the first speaker and the tragus of the first ear in the as worn orientation is with the range of from about 2 mm and about 3cm (speaker (24), conventional speakers embedded in the frame, paragraph 0030) .

As to claims 10 and 11, Warren teaches a first and second user-removable battery powering the interface electronics (power source (30); batteries that screw into a receptacle in the frame, paragraph 0032).

As to claim 12 with respect to claim 10, Since Warren teaches various power sources can be used such as conventional batteries, paragraph 0032, means for recharging the first battery without removing the battery from the support would be an inherent feature similar to other portable electronic music devices.

As to claim 13, Warren teaches a photovoltaic power device powering the interface electronics (power source (30), paragraph 0032).

As to claims 14-17, Warren teaches a method of receiving a telephone call comprising:

Wearing a wireless audio interface carried by an eyeglass frame, the eyeglass frame comprising at least a first speaker, a microphone and a short range transceiver

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for communicating with a cellular telephone which is electronically paired with the transceiver (figure 2 and paragraph 0023 and electronically paired with short range transceiver: paragraphs 0026 and 0029),

Perceiving an incoming call on the cellular telephone (the nearby cell phone rings or vibrates and the eyeglass interface turns on),

Activating the wireless interface to communicate with the cellular telephone (automatically turning on the device upon reception of a signal from the cell phone or a manual on/off switch, paragraph 0032).

As to claim 35, Warren teaches a method of manipulating a signal in a wireless personal network comprising:

Providing source electronics within an effective range of the wireless person network (figure 2, paragraph 0033),

Providing an interface having at least one speaker, the interface configured to position the speaker adjacent the ear of a wearer (speaker (24), paragraphs 0030 and 0031),

Activating a control on the interface (manual on/off switch, paragraph 0032) and,

Sending a signal from the source electronics to the speaker in response to the activating step (paragraph 0031).

As to claim 36, Warren teaches wherein the interface comprises at least two speakers (two or more speakers and volume control, paragraph 0030).

As to claim 37, Warren teaches mounting the source electronics on the wearer (figure 2, eyeglasses, paragraph 0023).

As to claims 38, 39 and 40, Warren teaches a method of manipulating a signal in a wireless personal network as in claim 35 wherein the providing step comprises providing a cellular telephone, music source or other electronic devices for accessing and playing music or other sounds, paragraph 0026.

As to claim 41, Warren teaches the step of wirelessly communicating the signal from a remote transceiver to the source electronics (paragraph 0029 and 0033).

3. Claims 18-34 are rejected under 35 U.S.C. 102(e) as being anticipated by Swab et al. (US 2004/0029582).

As to claims 18-24, Swab teaches an audio interface system comprising:

A wireless audio interface and

Source electronics electronically paired with the wireless audio interface (figures 1-4, eyeglasses with short range Bluetooth wireless connection to a computer, bracelet, MP3-player or telephone, paragraph 0033, 0034 and 0043),

Wherein the interface comprises a first speaker and a second speaker carried by the interface such that in an as worn orientation on a wearer the first speaker is positioned adjacent but spaced apart from a first ear of the wearer and the second

speaker is positioned adjacent but spaced apart from a second ear of the wearer (paragraph 0043),

Wherein the wireless audio interface and the source electronics are configured to communicate wirelessly over a distance of no more than about 100 yards (variable power for short range transceiver per Bluetooth protocol, paragraph 0034).

As to claims 25-28, Swab teaches an audio interface system as in claim 18 further comprising a control carried by the audio interface for controlling the source electronics including on/off control, send, and receive control (paragraph 0042).

As to claims 29-32 with respect to claim 18, Swab teaches the interface comprises a first support for carrying the first speaker and a second support for carrying the second speaker (audio equipment mounted in an eyeglass frame figures 2a and 2b. paragraphs 0037-0041).

As to claim 33 with respect to claim 32, Swab teaches a battery in at least one of the first and second supports (paragraph 0039).

As to claim 34 with respect to claim 32, Swab teaches a Bluetooth chip carried by the eyeglass frame (paragraph 0039).

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Swab et al. (US 2004/0239874) discloses eyewear with exchangeable temples housing a radio frequency transceiver. Rickards (US 2005/0185815) discloses eyewear with hearing protection and communication assembly.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Blane J. Jackson whose telephone number is (571) 272-7890. The examiner can normally be reached on Monday through Friday, 8:00 AM-5:00 PM.

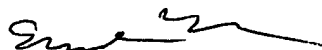
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Urban can be reached on (571) 272-7899. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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